Vandergriff et al v. Clermont County Public Library Board of Trustees Doc. 11

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GEORGE AND CATHY VANDERGRIFF AND INSTITUTE FOR PRINCIPLED POLICY,	:	Case No. 1:08-cv-381
	:	(Judge Barrett)
Plaintiffs,	:	
v.	:	DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION
CLERMONT COUNTY PUBLIC LIBRARY BOARD OF TRUSTEES,	:	
	:	
Defendants.	:	

Facts

Plaintiffs George and Cathy Vandergriff moved this Court to issue a preliminary injunction regarding a policy of Defendant Clermont County Library Board of Trustees [hereinafter "Library Board"] with regard to the use of the library meeting rooms. Plaintiffs' allege that the Library Board's meeting room use policy is unconstitutional in that it prohibited "religious speech." In short, Plaintiffs contend that they were denied use of the library meeting room because of the religious content of their intended speech, and this denial violated their right to free speech, free exercise of religion, and due process.

Plaintiffs have moved this Court to issue a preliminary injunction to enjoin Defendant Library Board "from enforcing its discriminatory meeting room policy to prohibit Plaintiffs from conducting a religiously-based financial planning workshop."

On the afternoon of Monday, June 9, 2008, David Langdon, Plaintiffs' counsel, sent via electronic mail what he termed "courtesy copies of our filings" in the case at bar to Thomas

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Blust, Chief of the Civil Division of the Clermont County Prosecutor's Office. See Ex. A Langdon's E-mail to Thomas Blust.

That evening, Defendant Library Board met for its regularly scheduled monthly meeting at the Williamsburg branch of the library system. At the time of the meeting, no trustee nor employee of Defendant Library Board had been served with the pleadings.

During its meeting, Defendant Library Board voted to adopt a new meeting room use policy effective immediately. See Ex. B, Affidavit of David Mezack. Pursuant to the new policy adopted on June 9, 2008, the library's meeting rooms would be available for use only by the library for meetings and the programs it sponsors. That is, the library's meeting rooms were no longer available for use for non-library sponsored events or programs. Thus, under the new policy, no request by a group or individual to conduct meetings in the meeting rooms would be granted.

Before 9 a.m. on the morning of June 10th, counsel for Defendant Library Board faxed a letter to David Langdon, Plaintiffs' counsel, explaining that the Board had amended its policy with regard to meeting room use, restricting the meeting rooms for library use only. See Ex. C Birck's letter to Langdon of June 10, 2008.

Argument

I. Plaintiffs' Motion for Preliminary Injunction is properly dismissed for mootness.

For the purposes of this Motion only, Defendant Library Board accepts the facts as alleged in Plaintiffs' Complaint as true.

A federal court's jurisdiction "extends only to actual cases and controversies." *See*

McPherson v. Mich. High Sch. Athletic Ass'n, 119 F.3d 453, 458 (6th Cir.1997). The Court of Appeals for the Sixth Circuit has recognized that "[a]lthough voluntary cessation of wrongful conduct does not automatically render a case moot, the case may nevertheless be moot if the defendant can demonstrate that there is no reasonable expectation that the wrong will be repeated." *See White v. Blackwell*, 2001 U.S. Dist. LEXIS 26048 at *6 *citing Mosley v. Hairston*, 920 F.2d 409, 415 (6th Cir.1990). Moreover, "[c]essation of the allegedly illegal conduct by government officials has been treated with more solicitude by the courts than similar action by private parties." *Id.*

A. Defendant Library Board acted immediately to remedy the alleged unconstitutional defects of the policy which Plaintiffs have moved to enjoin.

In the case at bar, Plaintiff Cathy Vandergriff claims that she verbally requested use of the library's meeting room on or about December 21, 2007 for a biblically-based financial planning meeting. Compl. at ¶16. She claims that an employee informed her that the library policy would not permit her use of the meeting room. Compl. at ¶17. The pleadings contain nothing to demonstrate that Plaintiff Cathy Vandergriff informed Defendant Library Board of the action of their employee, her disagreement with the policy, a request to clarification of the policy, an attempt to appeal of her right to use the meeting room, etc. before filing a lawsuit against the Board.

Similarly, the Complaint alleges that three months later, Plaintiff George Vandergriff submitted a written request to use the meeting room for a biblically-based financial planning discussion. Compl. at ¶17. Plaintiff George Vandergriff's request was also denied. Compl. at ¶¶19, 20.

There is no allegation in the pleadings that Defendant Library Board was aware of either request. Indeed, upon learning that the Vandergriffs were denied use of the meeting room, Defendant Library Board voted to adopt a new meeting room use policy to remedy any alleged unconstitutional defects in the meeting room policy and/or its implementation.

B. The Board's adopted a new policy; there is no reasonable expectation that the former policy will be reinstated.

The current meeting room use policy permits only library-sponsored meetings and/or programs in the meeting rooms. Plaintiffs have not alleged that the current policy violates their rights or is otherwise unconstitutional.

The enactment of the current meeting room use policy has received media attention. Ex. D, Cincinnati Enquirer news article. Defendant Library Board has instructed its employees to inform those who had reserved the meeting room of the newly adopted policy as well as those who regularly used the meeting room in the past. Ex. B, Affidavit D. Mezack

A policy change requires a majority vote of Defendant Library Board; Defendant Library Board has monthly meetings which are open to the public. As the Court in *White v. Blackwell* recognized,

> statutory changes that discontinue a challenged practice are 'usually enough to render a case moot, even if the legislature possesses the power to reenact the statute after the lawsuit is dismissed,'" *Valero Terrestrial Corp. v. Paige*, 211 F.3d 112, 116 (4th Cir.2000)(quoting *Native Village of Noatak v. Blatchford*, 38 F.3d 1505, 1510 (9th Cir.1994)), where there is no evidence that the state actually intends to reenact it, *see, e.g., Kentucky Right to Life v. Terry*, 108 F.3d 637, 645 (6th Cir.1997).

White v. Blackwell, 2001 U.S. Dist. LEXIS 26048 at *6. In light of the adoption of new policy, the Board's directive to communicate the changed policy to its users, and the media attention on the new policy, there is no reasonable expectation that Defendant Library Board will replace the current policy with the former policy.

C. Case law indicates that when the requested relief is accomplished through passage of time, actions of Defendant, or other extra-judicial means, a motion for preliminary injunction is moot.

In 1981, the Supreme Court of the United States considered a case in which a deaf graduate student sued the university he attended, alleging a violation of the Rehabilitation Act of 1973. *See University of Texas, et al. v. Camenisch*, 451 U.S. 390, 391 (1981). Specifically, Plaintiff Camenisch alleged that the University had discriminatorily refused to pay for a sign-language interpreter for him and asked the court to "[preliminarily] and permanently order defendants to appoint an interpreter for the plaintiff while he is a student in good standing at the defendant University." *Id.*

As in the case at bar, circumstances changed subsequent to the filing of the motion for preliminary injunction. As the Court noted, "By the time the Court of Appeals had acted, the University had obeyed the injunction by paying for Camenisch's interpreter, and Camenisch had been graduated." *Id.* at 393.

The question before the Supreme Court was not whether the University must ultimately pay for the interpreter (a question which remained open for a trial on the merits), but whether the preliminary injunctive relief was properly granted. The Court held that "In sum, the question whether a preliminary injunction should have been issued here is moot, because the terms of the injunction, as modified by the Court of Appeals, have been fully and irrevocably carried out." *Id.* at 398.

Conclusion

Quite simply, there is nothing left for this Court to enjoin; the issue raised in the motion for preliminary injunction is moot.

Respectfully submitted,

/s/ Mary Lynne Birck

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Certificate of Service

I hereby certify that the foregoing Answer was filed electronically this 10th day of July, 2008. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Mary Lynne Birck

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